SUPREME COURT, U.S.
FILED
DEC 28 1979
MICHAEL RODAK, JR., CLERK

No. 79-647

In the Supreme Court of the United States

OCTOBER TERM, 1979

BARBARA N. COPELAND, PETITIONER

v.

SAMUEL R. MARTINEZ, DIRECTOR,
COMMUNITY SERVICES ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-647

BARBARA N. COPELAND, PETITIONER

v.

SAMUEL R. MARTINEZ, DIRECTOR,
COMMUNITY SERVICES ADMINISTRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner contends that Section 706(k) of Title VII of the Civil Rights Act, 42 U.S.C. 2000e-5(k),[1] deprives the district courts of their historic equitable power to assess attorneys' fees against a party who has acted in bad faith whenever the party acting in bad faith is a Title VII plaintiff bringing suit against the United States.

1. In this Title VII action, the trial court found that petitioner "acted vexatiously, maliciously, and in bad

---

[1]Section 706(k) provides in relevant part (42 U.S.C. 2000e-5(k)):

> In any action or proceeding under this title the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee as part of the costs * * *."

faith in bringing and maintaining this action and has intentionally abused the judicial process" (Pet. App. 30a). The court found that her allegations of discrimination were "baseless and frivolous" (*ibid.*), that she had "consistently used grievances, threats of filing grievances, EEO complaints, threats of EEO complaints, and the EEO process in general to harass her supervisors and to improperly further her career and enhance her office status" (*id.* at 25a). The court stated that "[t]he evidence demonstrates conclusively that [petitioner] * * * intentionally conducted a vendetta against * * * the CSA management, harassing them by virtually every means available including use of the EEO process to bring baseless charges of discrimination" (*id.* at 30a). Relying on its inherent equitable power to award attorneys' fees in actions brought in bad faith and for oppressive reasons (*id.* at 32a-33a), the district court awarded the United States costs of $3,520.89, including an attorneys' fee of $3,193.40 (*id.* at 38a).

On appeal, petitioner did not challenge the finding by the district court that she had brought this action in bad faith. Instead, petitioner argued only that Section 706(k) of Title VII deprives the court of any power to award attorneys' fees to the United States in Title VII actions, even in cases involving intentional abuse of the judicial process. The court of appeals rejected that claim, holding that Section 706(k) does not abrogate the courts' common law authority to penalize a party who brings suit in bad faith by awarding attorneys' fees (Pet. App. 21a):

> It is the need to preserve the integrity of the judicial process which ultimately, in the face of inconclusive statutory language and legislative history, convinces us that Congress would not have wished to foreclose recovery here.

2. The decision of the court of appeals is correct and does not conflict with any decision of this Court or the other courts of appeals. Further review of the decision in this case is therefore unwarranted.

Petitioner acknowledges that it has long been established, even under the limited American common law rule, that attorneys' fees may be awarded against a party who has initiated and conducted litigation in bad faith. *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U.S. 240, 258-259 (1975). Petitioner argues, however, that in enacting Section 706(k) of Title VII, Congress implicity preempted this common law rule in suits brought against the United States under that Title. The court of appeals properly rejected petitioner's contention.

Section 706(k) was enacted to expand the common law attorneys' fee rule in Title VII actions by providing that attorneys' fees may be awarded in such actions to any "prevailing party," 42 U.S.C. 2000e-5(k). A prevailing plaintiff or defendant thus need not show that an action or defense was urged in bad faith to obtain attorneys' fees under Title VII. *Christiansburg Garment Co.* v. *EEOC*, 434 U.S. 412 (1978). At the same time, however, Section 706(k) provides that attorneys' fees may not be awarded under Title VII to the United States. But, as the court of appeals concluded (Pet. App. 11a):

> the excepting language [of Section 706(k)] * * * was meant to exclude the United States only from the *statutory* allowance of fees, governed by the expansive "prevailing party" standard, and to leave undisturbed the narrow equitable exception in cases of bad faith.

Petitioner argues (Pet. 6-14) that, under *Brown* v. *GSA*, 425 U.S. 820 (1976), the remedies afforded by Title VII should be exclusive and that, because the government is not entitled to obtain attorneys' fees under

Section 706(k), it may not be awarded fees in any Title VII litigation. But, as the court of appeals emphasized, the award of attorneys' fees under the common law rule is punitive, not remedial. It is designed "to preserve the integrity of the judicial process" in actions brought in bad faith or for the purpose of harassment (Pet. App. 21a).

As this Court stated in *Hall* v. *Cole*, 412 U.S. 1, 5 (1973) (emphasis added):

> [I]t is unquestioned that a federal court may award counsel fees to a successful party when his opponent has acted "in bad faith, vexatiously, wantonly, or for oppressive reasons." * * * In this class of cases, *the underlying rationale of "fee shifting" is, of course, punitive*, and the essential element in triggering the award of fees is therefore the existence of "bad faith" on the part of the unsuccessful litigant.

See also *Hutto* v. *Finney*, 437 U.S. 678, 689 n.14 (1978). Because the award of attorneys' fees against a party acting in bad faith is designed to preserve the integrity of the judicial process and is only "incidentally" remedial (Pet. App. 21a n.68), the court of appeals correctly held that Section 706(k) does not withdraw the court's discretionary authority to award fees against a Title VII plaintiff whose claims are "baseless and frivolous" and are brought in bad faith to harass supervisors and obtain unmerited promotions (Pet. App. 25a-30a).

Petitioner suggests (Pet. 20) that "the *in terrorem* effect of the possibility of an award of counsel fees under any circumstances would seriously inhibit the enforcement of the Act." But, as the court of appeals noted (Pet. App. 19a), the common law attorneys' fee rule has not chilled the filing of lawsuits in general and it will not

have that effect under Title VII. The common law attorneys' fee rule would deter the enforcement of Title VII only if employees with meritorious claims believed that the courts were likely to so mischaracterize or misconstrue their complaints as to find them not only without merit, but vexatious and intentionally abusive of the judicial process as well. Such a result is not likely to occur. Moreover, in *Christiansburg Garment Co.* v. *EEOC*, *supra*, 434 U.S. at 421, the Court determined that prevailing defendants in private Title VII litigation could recover attorneys' fees on a far lesser showing than bad faith, despite the fact that "the plaintiff is the chosen instrument of Congress to vindicate [the policies of Title VII]." 434 U.S. at 418.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

DECEMBER 1979

DOJ-1979-12